

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY	)	
AVERAGE WHOLESALE PRICE	)	MDL No. 1456
LITIGATION	)	
	)	CIVIL ACTION: 01-CV-12257 PBS
THIS DOCUMENT RELATES TO	)	
Master File No. 01-CV-12257-PBS	)	Judge Patti B. Saris
	)	
	)	Chief Mag. Judge Marianne B. Bowler
	)	

**STATUS REPORT AUGUST 2, 2004**

Pursuant to the Court's June 17, 2004 Procedural Order, the undersigned counsel for Plaintiffs and Defendants hereby submit the attached status report to the Court listing the status of all pending motions to date.

Respectfully Submitted,

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ON BEHALF OF ALL PLAINTIFFS

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DATED: August 2, 2004

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### **CERTIFICATE OF SERVICE**

I hereby certify that I, Thomas M. Sobol, an attorney, caused a true and correct copy of the foregoing Status Report to be served on all counsel of record electronically on August 2, 2004, pursuant to Section D of Case Management Order No. 2.

/s/ Thomas M. Sobol

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**MDL 1456 STATUS CHART – GOVERNMENT ENTITY CASES**

GOVERNMENT ENTITY CASES	MDL DOCKET NUMBER	ORIGINAL JURISDICTION	STATUS
Montana v. Abbott Labs., Inc. et al.	02-CV-12084-PBS	Removed to D. Mont.	<ul style="list-style-type: none"> <li>• <b>No Pending Motions</b></li> </ul>
Nevada v. American Home Products, Inc. et al (“Nevada II”)	02-CV-12086-PBS	Removed to D. Nev.	<ul style="list-style-type: none"> <li>• July 19 2004 – <b>B. Braun’s Motion to Re-Dismiss the State of Nevada’s Amended Complaint for Improper Service and Lack of Personal Jurisdiction</b> <ul style="list-style-type: none"> <li>◦ Withdrawn by B. Braun as moot on August 2, 2004</li> </ul> </li> </ul>
California <i>ex rel.</i> Ven-A-Care of the Florida Keys, Inc. v. Abbott Labs., Inc. et al.	03-CV-11226-PBS	Removed to C.D. Cal.	<ul style="list-style-type: none"> <li>• <b>Renewed Motion to Remand <i>sub judice</i></b> <ul style="list-style-type: none"> <li>◦ Hearing held on December 12, 2003</li> <li>◦ Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims filed by Plaintiff on December 18, 2003</li> <li>◦ Response filed by Abbott on January 9, 2004</li> </ul> </li> <li>• Briefing on motion to dismiss postponed pending a ruling on renewed motion to remand</li> </ul>
County of Suffolk v. Abbott Labs., Inc. et al.	03-CV-10643-PBS	E.D.N.Y.	<ul style="list-style-type: none"> <li>• <b>Motions to Dismiss <i>sub judice</i></b> <ul style="list-style-type: none"> <li>◦ Hearing held on December 12, 2003</li> <li>◦ March 18, 2004 – Brief of the United States as Amicus Curiae</li> <li>◦ April 9, 2004 – Defendants’ Brief in Response to the Amicus Curiae Briefs of the United States and the Commonwealth of Massachusetts</li> <li>◦ April 23, 2004 – United States’ Reply Brief as Amicus Curiae</li> <li>◦ June 14, 2004 – Defendants’ Notice of Supplemental Authority in the Suffolk case</li> <li>◦ June 18, 2004 – Plaintiff Suffolk County’s Response To Defendants’ Notice Of Supplemental Authority</li> <li>◦ June 24, 2004 – Defendants’ Motion to Strike Plaintiffs’ Response to Defendants’ Notice of Supplemental Authority, or for Leave to File a Reply</li> <li>◦ June 28, 2004 – Plaintiff Suffolk County’s Opposition To Defendants’ Motion To Strike Suffolk’s Response To Defendants’ Notice Of Supplemental Authority</li> <li>◦ June 29, 2004 – Order denying Motion to Strike Response to Defendants’ Notice of Supplemental Authority</li> </ul> </li> </ul>
County of Rockland v. Abbott Labs., Inc. et al.	03-CV-12347-PBS	S.D.N.Y.	<ul style="list-style-type: none"> <li>• <b>No Pending Motions</b></li> <li>• Stipulation in place extending defendants’ time to answer until 30 days after decision on motions to dismiss Suffolk County complaint</li> </ul>
County of Westchester v. Abbott Labs., Inc. et al.	n/a	S.D.N.Y.	<ul style="list-style-type: none"> <li>• <b>No Pending Motions</b></li> <li>• Stipulation in place extending defendants’ time to answer until 30 days after decision on motions to dismiss Suffolk County complaint</li> </ul>

**MDL 1456 STATUS CHART – PRIVATE CLASS CASES**

PRIVATE CLASS CASES	MDL DOCKET NO.	ORIGINAL JURISDICTION	STATUS
<b>Master Consolidated Class Action</b>	Master File 01-CV-12257-PBS	D. Mass. pursuant to JPML Order	<ul style="list-style-type: none"> <li>• April 27, 2004 – <b>Plaintiff Suffolk County’s Motion Respecting Coordinated Discovery <i>sub judice</i></b> <ul style="list-style-type: none"> <li>○ May 11, 2003 – Response of Liason Counsel to Suffolk County’s Motion Respecting Coordinated Discovery</li> <li>○ May 24, 2004 – Plaintiff Suffolk County’s Reply on Motion Respecting Coordinated Discovery</li> <li>○ May 26, 2004 – Plaintiffs’ Motion to File A Surreply In Opposition to Suffolk County’s Reply on Motion Respecting Coordinating Discovery; Liaison and Plaintiff Counsels’ Surreply to Suffolk County’s Reply on Motion Respecting Coordinated Discovery</li> <li>○ May 28, 2004 – Memorandum of Bristol–Myers Squibb Company in Response To The Motion Of County Of Suffolk Addressing The Role Of Liaison Counsel For All Plaintiffs</li> <li>○ May 28, 2004 – Response of Liaison Counsel to BMS Memorandum Addressing the Role of Liaison Counsel</li> <li>○ June 22, 2004 – Order Granting Plaintiffs’ Motion for Leave to File a Surreply in Opposition to Suffolk County’s Reply on Motion Respecting Coordinating Discovery</li> </ul> </li> <li>• May 3, 2004 – <b>Plaintiffs’ Motion to Compel The Production of Documents Created During the Relevant Time Period from Defendants Abbott Laboratories, Astrazeneca, Schering Plough, Sicor and Together Rx Defendants <i>sub judice</i></b> (Magistrate Bowler) <ul style="list-style-type: none"> <li>○ May 17, 2004 – Certain Defendants’ Notice of Opposition to Plaintiffs’ Motion to Compel the Production of Certain Documents and Consent Motion for an Extension of Time</li> <li>○ May 26, 2004 – Notice of Withdrawal of Plaintiffs’ Motion to Compel the Production of Documents Created During the Relevant Time Period Directed at Defendant Schering–Plough (<i>Note: withdrawal applies only to Schering–Plough</i>)</li> <li>○ May 27, 2004 – Consent Motion for an Extension of Time to Oppose the Motion to Compel</li> <li>○ May 27, 2004 – Opposition of the Together Rx Defendnats to Plaintiffs’ Motion to Compel the Production of Documents</li> <li>○ May 28, 2004 – Notice Of Withdrawal Of Plaintiffs’ Motion To Compel The Production Of Documents Created During The Relevant Time Period Directed At Defendant Abbott Laboratories</li> </ul> </li> </ul>

PRIVATE CLASS CASES	MDL DOCKET NO.	ORIGINAL JURISDICTION	STATUS
Master Consolidated Class Action (continued)			<p><i>(Note: withdrawal applies only to Abbott Laboratories)</i></p> <ul style="list-style-type: none"> <li>○ June 8, 2004 – Notice of Withdrawal of Plaintiffs’ Motion to Compel the Production of Documents Created During the Relevant Time Period Directed at Defendant AstraZeneca. <i>(Note: withdrawal applies only to AstraZeneca)</i></li> <li>○ June 9, 2004 – Plaintiffs’ Reply Memorandum In Support of Motion To Compel The Production of Documents Created During The Relevant Time Period From The Together Rx Defendants</li> <li>○ June 22, 2004 – Order granting Plaintiffs’ Motion to Withdraw Motion to Compel Directed at Abbott Laboratories</li> <li>○ June 22, 2004 – Order granting AstraZeneca’s Assented to Motion for Extension of Time to File Response to Plaintiffs’ Motion to Compel</li> <li>○ June 22, 2004 – Order finding as Moot AstraZeneca’s Motion for Extension of Time to Oppose Plaintiffs’ Motion to Compel</li> <li>○ Awaiting scheduling of hearing or ruling by Court as to Together Rx Defendants.</li> </ul> <ul style="list-style-type: none"> <li>• June 15, 2004 – <b>Track 1 Defendants’ Motion for a Protective Order Precluding Plaintiffs from Taking Depositions Notice on May 27, 2004 <i>sub judice</i></b> (Magistrate Bowler) <ul style="list-style-type: none"> <li>○ June 24, 2004 – Plaintiffs’ Opposition to Motion for Protective Order</li> </ul> </li> <li>• July 1, 2004 – <b>Plaintiffs’ Motion to Compel the Production of HHS ASP Documents Relating to All Defendants <i>sub judice</i></b> (Magistrate Bowler) <ul style="list-style-type: none"> <li>○ July 16, 2004 – Defendants’ Opposition to Plaintiffs’ Motion to Compel HHS ASP Documents</li> <li>○ July 19, 2004 – Defendant Sicor Inc. and Sicor Pharmaceuticals, Inc.’s Opposition to Plaintiffs’ Motion to Compel HHS ASP Documents</li> </ul> </li> <li>• July 1, 2004 – <b>Defendant BMS’s Motion to Compel Plaintiffs to Provide Proper Answers to Interrogatories <i>sub judice</i></b> (Magistrate Bowler) <ul style="list-style-type: none"> <li>○ July 15, 2004 – Plaintiffs’ Opposition to Motion to Compel “Proper Answers” to BMS’s Contention Interrogatories</li> </ul> </li> <li>• July 15, 2004 – <b>Plaintiffs’ Motion to Compel BMS to Answer Interrogatories <i>sub judice</i></b> (Magistrate Bowler)</li> </ul>

PRIVATE CLASS CASES	MDL DOCKET NO.	ORIGINAL JURISDICTION	STATUS
<b>Master Consolidated Class Action (continued)</b>			<ul style="list-style-type: none"> <li>○ July 30, 2004 -- Response of Defendant Bristol-Meyers Squibb Company to Plaintiffs' Motion to Compel BMS to Answer Interrogatories</li> <li>• July 26, 2004 – <b>Amgen Motion to Dismiss Corrected AMCC</b> <ul style="list-style-type: none"> <li>○ Plaintiffs' Opposition Due August 12, 2004</li> </ul> </li> <li>• July 30, 2004 – <b>Defendants' Motion to Enforce the Subpoena For, and Compel, the Deposition of Patricia Kay Morgan</b> (Magistrate Judge Bowler) <ul style="list-style-type: none"> <li>○ Filed simultaneously with <b>Defendants Motion to File Under Seal Portions of the Deposition Transcript of Patricia Kay Morgan Cited in Their Motion to Compel</b></li> <li>○ Responses Due August 13, 2004</li> </ul> </li> </ul>
<b>Thompson v. Abbott Labs., Inc. et al.</b>	03-CV-11286-PBS	Removed to N.D. Cal.	<ul style="list-style-type: none"> <li>• Consolidated into Master Class Action</li> </ul>
<b>Turner v. Abbott Labs., Inc. et al.</b>	03-CV-10696-PBS	Removed to N.D. Cal.	<ul style="list-style-type: none"> <li>• Consolidated into Master Class Action</li> </ul>
<b>Congress of California Seniors v. Abbott Labs., Inc. et al.</b>	03-CV-10216-PBS	Removed to C.D. Cal.	<ul style="list-style-type: none"> <li>• Consolidated into Master Class Action</li> </ul>
<b>International Union of Operating Engineers, Local No. 68 Welfare Fund v. AstraZeneca PLC et al.</b>	n/a	Removed to D.N.J.	<ul style="list-style-type: none"> <li>• <b>Motion to Remand</b> filed in District of New Jersey prior to transfer; briefed while pending in District of New Jersey</li> </ul>